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SEA

SERVICE DATE - FEBRUARY 3, 1999

SURFACE TRANSPORTATION BOARD

Finance Docket No. 30186 (Sub-No. 3)

Tongue River Railroad Company, Construction and Operation of the Western Alignment
in Rosebud and Big Horn Counties, Montana.

Decided January 28, 1999

Action: Final scope of the Supplement.

Summary: On April 27, 1998, the Tongue River Railroad Company (TRRC) filed an application with the Surface Transportation Board (Board) under U.S.C. 10901 and 49 CFR 1150.1 through 1150.10 seeking authority to construct and operate a 17.3-mile line of railroad in Rosebud and Big Horn Counties, Montana, known as the “Western Alignment.” The line that is the subject of this application is an alternative routing for the portion of the 41-mile Ashland to Decker, Montana rail line that was approved by the Board on November 8, 1996 in Finance Docket No. 30186 (Sub-No.2), referred to as the “Four Mile Creek Alternative.”

On July 10, 1998, the Board’s Section of Environmental Analysis (SEA) served a Notice of Intent to prepare a Supplement to the Final Environmental Impact Statement in Finance Docket No. 30186 (Sub-No.2) (Supplement) to evaluate and consider the potential environmental impacts that might result from the construction and operation of the Western Alignment, and requested comments on the scope of the Supplement. SEA reviewed and considered all of the comments in preparing the final scope of the Supplement, which is discussed below.

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Supplementary Information:

Proposed Action and Background

On April 27, 1998, TRRC filed an application with the Board in Finance Docket No. 30186 (Sub-No. 3) seeking authority to construct and operate a 17.3-mile line of railroad in Rosebud and Big Horn Counties, Montana (MT), known as the Western Alignment and subsequently referred to as Tongue River III. The line that is the subject of this application is an alternative routing for the southernmost portion of the 41-mile Ashland to Decker, MT rail line that was approved by the

Board on November 8, 1996 in Finance Docket No. 30186 (Sub-No.2), via the Four Mile Creek Alternative and subsequently referred to as Tongue River II.¹

The TRRC rail line project has been considered by the Board in two separate proceedings. In its original application filed in 1983, TRRC sought approval from the Interstate Commerce Commission (ICC, the Board's predecessor agency) to construct and operate 89 miles of railroad between Miles City, MT and two termini located near Ashland, MT in Finance Docket No. 30186 (Sub-No. 1), and subsequently referred to as Tongue River I. In a decision served May 9, 1986, the ICC approved Tongue River I. TRRC then sought in Tongue River II, approval to extend the line another 41 miles from Ashland to Decker, MT. As discussed above, the Board approved Tongue River II, via the Four Mile Creek Alternative, in November 1996.

The ICC/Board's environmental staff, now the Section of Environmental Analysis (SEA), prepared environmental impact statements (EISs) for both Tongue River I and Tongue River II.² TRRC has reported to the Board that it has conducted various preconstruction activities on both segments but actual construction has not yet begun.

In Tongue River I and Tongue River II, the Board determined that the public convenience and necessity required or permitted TRRC's proposed rail line construction and operation, in accordance with former 49 U.S.C. 10901, and the Board does not intend to reopen the merits of the authority granted in these proceedings. The action proposed to be taken here is predicated on TRRC's proposed change to its previously approved construction authorizations, which necessitates SEA's review of associated potential environmental impacts and a subsequent decision by the Board as to whether the proposed Western Alignment satisfies the criteria of current 49 U.S.C. 10901.

Environmental Review Process

On July 10, 1998, the Board served a Notice of Intent (NOI) to prepare a Supplement to the Final EIS (Supplement) in Tongue River III to consider the potential environmental impacts of the

¹ Petitions for review of Tongue River II are pending in the Ninth Circuit. Those cases are being held in abeyance until this case is decided.

² In Tongue River I, Tongue River Railroad Company - Rail Construction And Operation - In Custer, Powder River, And Rosebud Counties, Montana, Finance Docket No. 30186 (Miles City to Ashland), the Draft Environmental Impact Statement was served July 15, 1983; the Supplement to the Draft Environmental Impact Statement was served January 19, 1984; and the Final Environmental Impact Statement was served August 23, 1985. In Tongue River II, Tongue River Railroad Company - Rail Construction And Operation Of An Additional Rail Line From Ashland To Decker, Montana, Finance Docket No. 30186 (Sub No. 2), the Draft Environmental Impact Statement was served July 17, 1992; the Supplement to the Draft Environmental Impact Statement was served March 17, 1994; and the Final Environmental Impact Statement was served April 11, 1996.

proposed Western Alignment. The NOI also sought comments on the scope of the Supplement from TRRC and all interested persons, and specifically requested comments on whether the analysis of the Supplement should be limited to the Western Alignment. SEA received 34 comments from Federal, state, and local agencies, as well as TRRC, individual property owners, and community representatives. SEA has prepared this scope for the Supplement based on a careful review of all the comments to the NOI, consultations with appropriate Federal and state agencies, and review of the environmental documents and studies previously prepared in Tongue River I and Tongue River II. Assisting in the preparation of the Supplement is SEA's independent third-party contractor, Public Affairs Management of San Francisco, CA.

The scope of this Supplement in Tongue River III has been developed in consultation with three agencies that have requested cooperating agency status: 1) the U.S. Army Corps of Engineers (Corps); 2) U.S. Department of Interior, Bureau of Land Management (BLM); and 3) the Montana Department of Natural Resources and Conservation (MT DNRC), acting as lead agency for other Montana state agencies. These three agencies also have decision making authority independent of the Board and are the three principal agencies from whom TRRC must obtain separate approvals. To help these agencies fulfill their regulatory responsibilities and functions, and to avoid duplicative environmental analysis, SEA will include in this Supplement environmental review of certain issues specifically requested by the cooperating agencies and outlined below. SEA met with these agencies and sought their comments on the scope of this Supplement. A detailed description of the Supplement, which the three cooperating agencies have generally agreed upon and which includes the scope of the analysis for the Western Alignment and those portions of Tongue River I and Tongue River II that will be analyzed, is set forth below.

SEA will serve a Draft Supplement on all the names on its service list and on appropriate Federal, state, and local agencies, and will publish notice of this document in the Federal Register. The public will be invited to comment. SEA will carefully consider all the comments received on the Draft Supplement, conduct any further environmental review that may be necessary, and will then prepare a Final Supplement that will also be served on the parties to the proceeding. A notice of the Final Supplement will also be published in the Federal Register. The Board will then take into account the Draft Supplement, the Final Supplement, and all comments received in issuing its final written decision in Tongue River III.

Proposed Scope for the Supplement

Tongue River III

The scope of the Supplement for the Western Alignment in Tongue River III will involve a detailed environmental review of the proposed 17.3 miles of new rail line. The Supplement will assess environmental impacts associated with construction and operation of the proposed Western Alignment and will recommend environmental mitigation where feasible and appropriate. The Supplement will discuss alternatives to the proposal and will compare the effects of the Western Alignment to the approved Four Mile Creek Alternative, and the No-Build Alternative. The analysis

will include discussion of the following topics: biological and aquatic resources, land use, cultural resources, water quality, socioeconomics, environmental justice, transportation and safety, soils and geology, air quality, aesthetics, noise and vibration effects, recreation, and cumulative effects. Impacts on Native Americans, including sites of importance to them, will be addressed.

Tongue River I and Tongue River II

The scope of the Supplement will also include a limited review of certain portions of the environmental documents prepared in Tongue River I and Tongue River II. Based on careful review of all the comments to the NOI and consultation with the three cooperating agencies, SEA and the cooperating agencies believe additional analysis beyond the Western Alignment is justified in these areas: 1) where environmental circumstances or requirements have changed in a manner warranting the updating and augmenting of analysis for Tongue River I or Tongue River II; 2) where there have been refinements to the alignment previously considered in the Tongue River I and Tongue River II EISs requiring additional environmental analysis because they might result in significant environmental impacts not addressed in those previous EISs; and 3) where further environmental analysis is appropriate to assist the cooperating agencies in their environmental review and permitting processes, as specifically requested by these agencies.

Although the comments in response to the NOI referred to possible changes to the alignment previously considered, they did not identify significant changed physical circumstances within the project area that would warrant a complete environmental re-analysis of either Tongue River I or Tongue River II. However, TRRC submitted information in response to the NOI indicating that the alignment of the railroad has been refined somewhat from that analyzed in Tongue River I and Tongue River II. In addition, the Montana state agencies have raised the issue of whether or not a particular corridor was analyzed and approved as part of the previous Board approvals. In response to this information, SEA and the cooperating agencies have determined that the scope of the Supplement should be broadened to include a comparative analysis to determine if any of the changes from the previously considered alignments in Tongue River I and Tongue River II would result in significant environmental effects not previously considered.

Cooperating Agencies' Jurisdiction

The proposed TRRC rail construction and operation project in Tongue River I and Tongue River II has spanned a number of years and has been considered by the Board in separate proceedings. TRRC has sought various separate easements and/or permits that are required by other Federal and state agencies before it can begin to construct and operate its proposed rail line, some of which have been granted but have now expired. As stated earlier, principal among these other permitting agencies are the three agencies that have asked for cooperating agency status in the preparation of this Supplement. In processing their easements and/or permits, the three cooperating agencies will utilize the Supplement to reach their own conclusions regarding the environmental effects of the proposed rail line and have advised SEA that they will now view TRRC's proposed project as a single line from Miles City to Decker, MT for these permitting purposes. After

consulting with these agencies, SEA has agreed to provide specific additional analysis in the Supplement regarding environmental issues related to Tongue River I and Tongue River II to assist them in their permitting processes. The agencies may require an independent assessment to validate any data in question.

The Board has already taken actions approving the construction of a rail line pursuant to the applications of Tongue River I and Tongue River II. However, the cooperating agencies have not completed their separate review processes. Each of the cooperating agencies will issue their own Record of Decision, and any necessary easements and permits³ that would be required by their separate processes as a condition to the construction of the rail line in Tongue River I, Tongue River II, and Tongue River III.

BLM and the MT DNRC will hold public scoping meetings on TRRC's application for construction and operation TRRC's proposed rail line from Miles City to Decker, MT. Both agencies stated that these public scoping meetings are necessary in order to fulfill their separate permitting requirements. To the extent possible, SEA will address any new environmental issues raised at these scoping meetings that are relevant to the scope outlined here, and incorporate these issues in the Supplement.

Cumulative Effects

SEA will include in the Supplement a discussion of cumulative environmental impacts for the entire line from Ashland to Decker, MT for both the Four Mile Creek Alternative and the Western Alignment. This cumulative impacts discussion will update the previous information contained in Tongue River I and Tongue River II to include Custer Forest timber sales projections, as well as a discussion of reasonably foreseeable developments. In addition, more general information will be provided regarding future development of the coal mines in the Ashland, MT

³ Permits to be issued by cooperating agencies.

Army Corps of Engineers: Section 404 permit for the placement of fill in wetlands and waters of the U.S.

Bureau of Land Management: Granting of easements across BLM owned and/or managed lands.

State of Montana: Temporary Water Use (Form 600), Floodplain Development Permit, Navigable Rivers LUL/Easement (Form DS-432), LUL for Access to State Lands (Form DS-401), Right-of-Way Easement for Crossing State Land, Notice of Settlement of Damages Form (DS-457), MDT Encroachment Permits, Storm Water Discharge (MPDES)-General Permit MTR 100000, MPDES (construction related discharge)-Project specific permit, 310 Permit (county permit), Short Term Exemption from Surface Water Quality Standards (3A), 401 Certification to the Army Corps of Engineers, Easement for Crossing Fish Hatchery, Approval for private easements across existing DFWP conservation easements.

area and air quality effects of the use of low sulfur coal in power production. Impacts to Native Americans will also be addressed.

Format of the Supplement

The Supplement will be organized into three separate sections. The first section will evaluate the potential impacts associated with the proposed Western Alignment in Tongue River III. The second section will provide, as appropriate, updated analysis relating to Tongue River I and Tongue River II. A third section will discuss cumulative effects that would be associated with the construction and operation of the entire line from Miles City to Decker, MT from both the Four Mile Creek Alternative and the Western Alignment. At their request, and to assist the cooperating agencies in their permitting processes, SEA will provide appendices that address further environmental issues for the individual cooperating agencies. The information outlined in this scope will be found either in the body of the Supplement or in an appendix provided for each cooperating agency.

Assumptions

- To avoid duplication, the Supplement will refer to and utilize the environmental analyses prepared for Tongue River I and Tongue River II, if appropriate.
- The Supplement will evaluate the impacts of the proposed Western Alignment in Tongue River III, and will compare those impacts to the impacts related to the Four Mile Creek Alternative, the No-Build Alternative.

SECTION I

TONGUE RIVER III

Potential Environmental Impacts Associated with the Construction and Operation of the Western Alignment

1. Land Use

The Supplement will:

- A. Evaluate impacts to property owners along the Western Alignment in terms of property acquisition, agricultural productivity, and recreational activities.
- B. Evaluate the impact to parcels with a future potential for mechanical irrigation.
- C. Evaluate indirect or secondary impacts to land uses such as homes located upstream from creek and river crossings.

- D. Evaluate the impact of sidings as well as the rail line itself.
- E. Develop appropriate mitigation to address issues such as fencing, weed protection, cattle passes, and compensation for livestock killed by trains.

2. Biological and Aquatic Resources

The Supplement will:

- A. Establish a baseline for water quality and diversity of species for the Tongue River Region. The Supplement will map existing habitats using aerial photography and will describe the existing resources in the Tongue River Valley including vegetative communities, wildlife and wildlife movement (especially pronghorn and deer migration, and also the impact to the movement of smaller species such as turtles and other amphibians), fisheries, and Federally threatened or endangered species.
- B. Include a biological assessment of species, updating information from Tongue River II as appropriate. Specifically, the assessment will investigate species identified by the U.S. Fish and Wildlife Service in the species list provided for this project.
- C. Include a delineation of all prairie dog colonies to assist in determining the presence of Black-Footed Ferret.
- D. Include a survey of sensitive plant species including the Woolly Twinpod, and Barr's Milkvetch.
- E. Include wetland analysis for all wetlands and waters of the U.S. including creek and river crossings.
- F. Develop appropriate mitigation to ensure adequate protection from the introduction and spread of noxious weeds.
- G. Develop an appropriate mitigation plan for all wetlands and waters of the United States.
- H. Develop appropriate mitigation plans for erosion control, riverbank stabilization, and the reclamation and replanting of cut/fill slopes.

3. Soils and Geology

The Supplement will:

- A. Evaluate the potential for soil erosion during construction and long-term operation.

- B. Evaluate soil composition and the need for blasting.
- C. Evaluate the effect of blasting on the Tongue River Reservoir dam, and require a mitigation blasting plan if such activity is found to be necessary.
- D. Evaluate the effect of topography changes on runoff and flooding.
- E. Evaluate proposed engineering of bridges and culverts.
- F. Develop any appropriate mitigation.

4. Water Quality

The Supplement will:

- A. Include a hydrological analysis of the Tongue River and the potential impact of the construction and operation of Tongue River III upon it.
- B. Evaluate the specific potential of erosion from cut / fill slopes to degrade the current water quality of the Tongue River and tributary streams.
- C. Develop any appropriate mitigation.

5. Cultural Resources

The Supplement will:

- A. Evaluate potential impacts to cultural and paleontological resources.
- B. Include the final terms of the Programmatic Agreement currently under review by the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, Corps, the Board, and TRRC. The Programmatic Agreement will provide a means for identifying and addressing impacts on cultural resources, including Native American resources.
- C. Discuss the results of consultation with Native American tribes, specifically the Northern Cheyenne and the Crow, taking into consideration the following regulatory provisions and directives: The National Historic Preservation Act (amended 1992); The American Indian Religious Freedom Act (amended 1993); The Religious Freedom Restoration Act (enacted in 1993); The Sacred Sites Executive Order (released in 1996).

- D. Provide the results of consultation with representatives from the Northern Cheyenne and Crow tribes to solicit information about known properties, burials, or traditional use areas on or adjacent to Tongue River III.
- E. Discuss the eligibility of the Spring Creek Archeological District for the National Register of Historic Places, and potential impacts to this resource resulting from construction and operation of Tongue River III.

6. Transportation and Safety

The Supplement will:

- A. Evaluate the safety aspects of proposed crossings of the County Road at Four Mile Creek (proposed as a grade separated crossing), and where the Western Alignment would connect with the approved Tongue River II route at the north end (proposed as an at-grade crossing).
- B. Assess the potential for hazardous materials transport through the corridor, and the potential for the movement of more trains and coal than was envisioned in the prior EIS for Tongue River II.
- C. Assess the potential for train derailments and grade crossing accidents.
- D. Assess the safety, operational, and maintenance advantages submitted by TRRC regarding the Western Alignment when compared to the Four Mile Creek Alternative, including TRRC's improved overall grade, shorter travel distance, reduced long-term operating and maintenance costs, and reduced need for helper engines.
- E. Assess the opportunities for access by local property owners.
- F. Evaluate concerns regarding fire prevention and suppression.
- G. Discuss the terms of the Memorandum of Agreement between the Montana Department of Transportation and TRRC that relate to potential environmental impacts and the implementation of mitigation measures.
- H. Develop any appropriate mitigation.

7. Energy

The Supplement will evaluate potential impacts to energy resources, and develop any appropriate mitigation.

8. Air Quality

The Supplement will:

- A. Evaluate construction-period dust emissions from project construction.
- B. Evaluate the effect of dust emissions from the long-term operation of the railroad on local recreation areas, farms, and homes.
- C. Evaluate particulate emission from locomotive operation.
- D. Develop any appropriate mitigation.

9. Noise and Vibration Effects

The Supplement will:

- A. Evaluate the project's effect on local property owners, residences, and ranch operations.
- B. Evaluate the project's effect on local recreational activities.
- C. Evaluate the project's effect on livestock and wildlife.
- D. Evaluate the effect of blasting and vibration for the project on the Tongue River Reservoir dam if blasting is necessary for construction.
- E. Develop any appropriate mitigation.

10. Socioeconomics

The Supplement will:

- A. Evaluate potential impacts of Tongue River III on local social and economic patterns derived from physical changes. More detailed analysis of socioeconomics can be addressed by the cooperating agencies in their own review process. This could include, as appropriate, potential impacts of the project on local population changes in terms of short-term and long-term employment; impacts of new students generated as a result of construction workers moving into the region; increase in Taxable Value for each of the alternatives; any additional analysis conducted by BLM.
- B. Develop any appropriate mitigation.

11. Recreation

The Supplement will evaluate impacts to the Tongue River State Recreation Area, and develop any appropriate mitigation.

12. Aesthetics

The Supplement will:

- A. Evaluate the visibility of the project from the Tongue River State Recreation Area.
- B. Evaluate the visibility of the project from county roads in the area.
- C. Evaluate the visibility of the project to local residents, Native Americans, hunters, recreational users, sightseers, etc.
- D. Develop any appropriate mitigation.

13. Environmental Justice

The Supplement will include analysis as required of potential environmental justice effects from construction and operation of the Western Alignment, particularly focused on impacts to Native Americans, including the Northern Cheyenne, and develop any appropriate mitigation.

SECTION II

TONGUE RIVER I AND TONGUE RIVER II

Additional Environmental Review

As discussed earlier, the following section outlines additional analysis of certain limited portions of the environmental analysis in Tongue River I and Tongue River II that will be undertaken in the Supplement. Based on careful review of all the comments to the NOI and consultation with the three cooperating agencies, SEA and the cooperating agencies believe that additional analysis beyond Tongue River III is justified in three areas: 1) where environmental circumstances or requirements have changed in a manner warranting the updating and augmenting of analysis for Tongue River I or Tongue River II; 2) where there have been refinements to the alignment previously considered in the Tongue River I and Tongue River II EISs requiring additional environmental analysis because they might result in significant environmental impacts not addressed in those previous EISs; and 3) where further environmental analysis is appropriate to assist the cooperating agencies in their environmental review and permitting processes, as specifically requested by these agencies.

The information required to address these three areas will be included either in the body of the Supplement, or in an appendix provided for each cooperating agency. The additional analysis will include appropriate mitigation.

Again, the applicable assumptions are:

- To avoid duplication, the Supplement will refer to and utilize the environmental analyses contained in the prior environmental documents for Tongue River I and Tongue River II, where possible.
- The Supplement will evaluate refinements to the alignment previously considered in Tongue River I and Tongue River II to determine if environmental impacts would occur that were not identified in the prior EISs for Tongue River I and Tongue River II.

TONGUE RIVER I

Tongue River I is TRRC's original application for construction and operation of 89 miles of railroad between Miles City, MT, and two termini in Ashland, MT, which was approved by the Board's predecessor in 1986.

The Supplement will:

- A. Include a wetland analysis for all wetlands and waters of the U.S. including creek and river crossings because there was no requirement that one be done when the EIS in Tongue River I was prepared.
- B. Update biological assessment information based on consultation with the U.S. Fish and Wildlife Service.
- C. In consultation with the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, and TRRC finalize and implement an appropriate Programmatic Agreement which will apply to the entire line from Miles City to Decker, MT.
- D. As requested by MT DNRC, the Northern Cheyenne, and the Northern Plains Resource Council, provide a limited additional analysis of water quality to include a discussion of the designation of Otter Creek, and the upper and lower Tongue River as impaired water bodies by the state of Montana.
- E. Evaluate effects on BLM property in the areas of wildlife habitat; vegetation; riparian/wetlands; livestock grazing; soil, water, and air; cultural resources; recreation; socioeconomic; access; wilderness; and, environmental justice.

- F. Include an analysis of potential impacts to the Sturgeon Chub, and the Sicklefin Chub, and include mitigation to avoid construction during spawning / incubation periods.
- G. Include additional analysis related to the proposed changes in the alignment that may result in potential impacts to the Miles City Fish Hatchery.

TONGUE RIVER II

TRRC sought in Tongue River II to extend the rail line approved in Tongue River I another 41 miles from Ashland to Decker, MT. In 1996, the Board approved Tongue River II via the Four Mile Creek Alternative.

The Supplement will:

- A. Based on consultation with the Corps, update the existing wetland delineation and functional analysis information for all creek and river crossings to the extent necessary in connection with the Corps' permitting process.
- B. Based on consultation with the U.S. Fish and Wildlife Service, update biological assessment information to the extent deemed necessary.
- C. In consultation with the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, and TRRC, finalize and implement an appropriate Programmatic Agreement which will apply to the entire line from Miles City to Decker, MT.
- D. As requested by the MT DNRC, the Northern Cheyenne, and the Northern Plains Resource Council, provide a limited analysis of water quality to include a discussion of the designation of Hanging Woman Creek, and the upper and lower Tongue River as impaired water bodies by the state of Montana.
- E. Include additional analysis as required of potential environmental justice effects from construction and operation of Tongue River II on Tongue River III and the Four Mile Creek Alternative, particularly focused on impacts to Native Americans, including the Northern Cheyenne.

SECTION III

CUMULATIVE EFFECTS

Cumulative effects of the construction and operation of the entire line from Miles City to Decker, MT will be discussed. This cumulative impacts discussion will update the previous

information contained in Tongue River I and Tongue River II to include Custer Forest timber sales projections, as well as a discussion of reasonably foreseeable developments. In addition, more general information will be provided regarding future coal mine development in the Ashland, MT area and the air quality effects of the use of low sulfur coal in power production. Impacts to Native Americans will also be addressed.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary